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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DEC 20 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.622(b),)	MM Docket No. 00-180
Table of Allotments,)	RM-9956
Digital Television Broadcast Stations.)	
(Fort Myers, Florida))	

To: Chief, Video Service Division
Mass Media Bureau

PETITION FOR RECONSIDERATION OR MODIFICATION

Pursuant to Commission Rules 1.429(b)(1) and (3), Post-Newsweek Stations, Florida, Inc. ("Post-Newsweek") submits this Petition for Reconsideration or Modification of the Commission's Report and Order of November 20, 2002.¹ In the Report and Order, the Commission granted Fort Myers Broadcasting Company's ("FMBC") request for a change in its DTV channel allotment from Channel 53 to Channel 9, citing the technical merit, relinquishment of non-core spectrum, and cost savings presented by the proposal. During the proceeding, Post-Newsweek and Cox Broadcasting, Inc. ("Cox") filed comments in opposition to FMBC's requested modification raising, *inter alia*, substantial questions regarding the proposal's resultant destructive interference to existing analog and digital broadcast service and the certain displacement of WBSP-LP, Naples, Florida. Additionally, Post-Newsweek, Media-General Communications, and Caloosa Television Broadcasting Corporation, licensee of WBSP-LP, filed reply comments in opposition to FMBC's proposal. In its decision, the Commission stated that it did not consider Caloosa's comments because they "raise[d] new matters that should have been filed during the initial comment period..." and because "WBSP-LP is not a Class A eligible

¹ 47 C.F.R. § 1.429(b)(1), (3) (2001).

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facility and is therefore not entitled to protection against FMBC's proposal."² Neither of these grounds justifies disregarding Caloosa's comments. First, the concerns discussed by Caloosa had been raised in initial comments. In fact, the substance of Caloosa's filing was directed towards revealing the effect FMBC's proposal would have on WBSP-LP if granted, namely the ceasing of its operations. This issue was raised by Post-Newsweek in its initial comments? Second, WBSP-LP *was* a Class A eligible facility and is now a fully licensed Class A station. In an August 11, 2000 letter, the Chief of the Video Services Division of the Mass Media Bureau, Barbara Kreisman, informed Caloosa that WBSP-LP was Class A eligible. On August 10, 2001, some nine months after the comment period in this proceeding expired, WBSP-LP was awarded a Class A television broadcast station license,⁴ and thus is entitled to the protections afforded by the Community Broadcasters Protection Act ("CBPA")⁵ and § 73.6010 of the Commission's Rules.⁶ In light of the misapprehensions contained in the Report and Order, the destructive interference that will be suffered by at least 82,679 viewers (and probably many more) of full-service analog and digital television stations in Florida, and WBSP-LP's changed status as a fully licensed Class A station, Post-Newsweek urges the Commission to reconsider its decision to grant FMBC's proposal for change in DTV channel allotment.

1. As demonstrated in both our initial and reply comments, FMBC's proposal would cause destructive interference to the digital and analog service provided by the following

² See *Amendment to Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Fort Myers, Florida)*, Report and Order, DA 02-3154 at 1 n. 2 (Nov. 20, 2002) ("Report and Order").

³ See Comments of Post-Newsweek Stations, Florida, Inc. in Opposition to WINK-TV DTV Allotment Proposal 1-3 (filed Nov. 22, 2000) ("Post-Newsweek Comments").

⁴ See File No. BLTVA-20010712AIK; *see also*, Emergency Motion to Vacate Report and Order of Caloosa Television Corp., Exhibit B (filed Nov. 26, 2002).

⁵ PL 106-114, *codified at* 47 U.S.C. § 337(f) (2002)

⁶ 47 C.F.R. § 73.6010.

full power television stations: (1) WPLG Miami (co-channel digital); (2) WFTV Orlando (co-channel analog); and (3) WFLA Tampa (adjacent channel analog).⁷ In addition, FMBC's proposal would completely displace the existing broadcasting operations of co-channel Class A television station WBSP-LP, Channel 9, Naples. Using the Commission's conservative interference calculation methodology, some 82,679 persons would experience the loss of their existing full power analog and digital broadcast service.⁸ This figure does not include the much larger population who will suffer degradation in service, or the entirety of the viewers currently enjoying the service of WBSP-LP.⁹ Granting this Petition will allow the Commission to evaluate fully the impact of FMBC's proposal on WBSP-LP and its viewers in light of its Class A status, in addition to its impact on the viewers of the other affected stations.

2. The consequences of granting FMBC's proposal would be even graver than is reflected by the Commission's interference methodology, noted above, primarily because the Commission's planning factors do not take into account either the propagation enhancing "super-refraction" phenomenon that occurs in Florida, or the realities of commercially available consumer antennae.¹⁰ Adjusting the Commission's planning factors to account for "super-refraction" and real world receive conditions demonstrates that FMBC's proposal could cause up to 3% of WPLG's service population to lose their existing DTV service.¹¹ This is well beyond

⁷ See Post-Newsweek Comments, 2-4; Reply Comments of Post-Newsweek Stations, Florida, Inc. in Opposition to WINK-TV DTV Allotment Proposal 2 (filed Dec. 11, 2000) ("Post-Newsweek Reply Comments").

⁸ See Post-Newsweek Comments, 5-8.

⁹ See, e.g., *Establishment of a Class A Television Service*, 15 FCC Rcd. 6355 (2000) ("Class A licensees will have 'primary' status as television broadcasters, thereby gaining a measure of protection from full-service television stations, even as those stations convert to digital format.")

¹⁰ See Post-Newsweek Comments 5-8.

¹¹ See *id.*; Post-Newsweek Reply Comments at 2-3. Because of "super-refraction", co-channel and adjacent channel stations require greater spacing to avoid destructive interference. FMBC's proposed Channel 9 DTV operations are 93.5 kilometers short spaced to WPLG's co-channel (continued..)

the Commission's *de minimis* interference threshold and not surprising given the degree of short-spacing between WPLG and WINK. In conjunction with the 100% disruption of WBSP-LP's Class A television service and destructive interference to other stations' analog and digital service, this demonstrates the need for reconsideration of the Report and Order. Particularly in light of the continued uncertainty with respect to DTV propagation and interference, the Commission should avoid creating such a severely short-spaced co-channel situation.

3. Finally, Post-Newsweek reiterates its position that FMBC's proposal fails to advance the public interest in any significant respect.¹² Again, we note that FMBC's proposal does not stem from any technical difficulty or need to replicate its analog service. FMBC's original Channel 53 DTV allotment already increases its analog service population by 11.4%.¹³ Rather, FMBC seeks a change in its allotment primarily to reap relatively minor cost savings and ostensibly to clear non-core spectrum.

Neither the receipt of an in-core channel during the DTV transition nor the relatively minor cost savings FMBC would reap as a result of the grant of its proposal would mitigate the vast disruption of analog and digital broadcast service the people of Florida would experience. First, FMBC already has an in-core VHF channel that it may occupy after the DTV transition.¹⁴ Indeed, FMBC has indicated that *it plans to relocate to this channel* at the end of the transition. The costs imposed by FMBC's out-of-core allotment are not significantly greater than any other broadcaster seeking to comply with the DTV implementation schedule. Viewed in this light, then, the only things a change in DTV allotment would accomplish are significant

DTV operations in Miami. Propagation enhancing phenomena, such as "super-refraction", already have resulted in interference situations, some of which are on record with the Commission.

¹² See Post-Newsweek Comments, 8-10; Post-Newsweek Reply Comments 2-3.

¹³ See Post-Newsweek Reply Comments at 3-4.

¹⁴ See Post-Newsweek Comments at 9.

disruptions to existing analog and digital service,” the imposition of significant “costs and burdens” on other broadcasters,¹⁶ and the irretrievable shuttering of Class A television station WBSP-LP, all in exchange for some \$260,000 in equipment cost savings for FMBC. Such an unbalanced trade should not be considered in the public interest. The public’s existing analog and digital television service should not be sacrificed in order to enhance the economic and competitive position of a single broadcaster.

* * * *

For the foregoing reasons, Post-Newsweek respectfully urges the Commission to reconsider its Report and Order granting FMBC’s allotment proposal. Granting this Petition will allow the Commission to consider the true impact of FMBC’s proposal on the public interest in light of the important issues raised by the commentators, including those impacts pertaining to the viewers of the fully licensed Class A broadcast station WBSP-LP.¹⁷

In the alternative, Post-Newsweek requests that the Commission modify its Report and Order to condition the grant of FMBC’s request on real-world interference measurements. While interference to WPLG caused by FMBC’s proposed operation is predicted under the Commission’s methodology to be below the 2% *de minimis* threshold, we strongly


¹⁵ FMBC’s requested channel allotment would increase its service area by some 51,415 persons, while disrupting the existing full power television service of at least 82,679 viewers. *See* Post-Newsweek Reply Comments at 4.

¹⁶ *See* Comments of Cox Broadcasting, Inc. 2 (filed Nov. 22, 2000).

¹⁷ Post-Newsweek joins Cox Broadcasting’s Petition for Reconsideration (filed December 20, 2002). We agree with Cox that its concerns about WINK-TV’s post-transition DTV operations are not speculative and therefore deserve full consideration by the Commission. We also agree with Cox’s suggestion that any channel reassignment to FMBC be conditioned on real world interference measurements. Additionally, Post-Newsweek hereby supports the grant of Caloosa Television Corporation’s Emergency Motion to Vacate Report and Order (filed November 26, 2002) to the extent that it urges the reconsideration of the Report and Order to evaluate the impact of the change in channel allotment on WBSP-LP.

believe that actual interference will be much higher and beyond acceptable limits. As FMBC currently has suitable digital and analog assignments, it should be required to bear the burden to modify its facilities, in accordance with the public interest, if such interference is greater than predicted.

Respectfully submitted,



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December 20, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of December, 2002, I caused a copy of the foregoing Petition for Reconsideration or Modification of Post-Newsweek Stations, Florida, Inc. to be delivered by first class mail, postage prepaid to the following:

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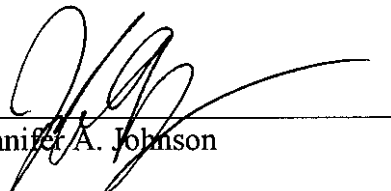
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